

**Commission on Health and Safety and Workers' Compensation**

**MINUTES OF MEETING**

**November 3, 2004**

**Anaheim Convention Center**

**Anaheim, California**

In attendance:

Chair, Tom Rankin

Commissioners Allen Davenport, Alfonso Salazar, Kristen Schwenkmeyer, Robert B. Steinberg,

Darrel "Shorty" Thacker, John C. Wilson

Executive Officer Christine Baker

Not in Attendance

Commissioner Leonard C. McLeod

**Call to Order / Minutes from the August 19, 2004, Meeting**

Chairman Tom Rankin called the meeting to order at 10:00 a.m. and asked for a motion on the draft minutes of the August 19, 2004, CHSWC meeting.

*CHSWC vote:*

Commissioner Steinberg moved to approve the minutes of the August 19, 2004, meeting, and Commissioner Salazar seconded. The motion passed unanimously.

**Combining Health Promotion and Injury Reduction: Report on NIOSH-CHSWC Study**

Robert T. Reville, Ph.D., RAND

Dr. Reville gave a presentation on the briefing given to the National Institute of Safety and Health (NIOSH) the previous week. Dr. Reville commented that this research is part of a CHSWC-funded project on identifying full employer costs of workplace injuries. Dr. Reville stated that NIOSH is beginning a large, multi-year initiative to help employers build programs to reduce occupational injuries and promote the health of workers. The goal of the study is to lower employer cost and improve worker health.

Dr. Reville's presentation reviewed the research on integrating health promotion and injury reduction. He highlighted the importance of understanding spillovers between personal health and workplace health and safety investments. He stated that improvement in worker health is economically valuable to employers, due in part to spillovers between personal health and occupational injury and illness.

Commissioner Wilson asked what RAND would like from CHSWC for this study. Dr. Reville replied that RAND will supply CHSWC with a background paper. CHSWC may want to think about doing something in the future with this information if it so chooses.

Commissioner Wilson commented that a number of public agencies have this type of program and asked if RAND has looked at these. Dr. Reville responded that he has not looked into other programs but that it would be good to do an evaluation of these programs.

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A member of the audience asked if RAND considered the effect of employers providing health insurance. Dr. Reville responded that they had not studied this. Although employer-provided health insurance would encourage employees to invest in their own health, this has not been specifically addressed.

Dr. Lin commented that the current guidelines do not allow providers to do health promotion, such as sending employees to the gym. Dr. Reville responded that there are institutional barriers to this kind of integration of a comprehensive look at the health of the workforce.

Dr. Sacks asked if the integration of health promotion and injury reduction would lead to discrimination in hiring and if RAND had considered that. Dr. Reville responded that there are certainly long-term challenges.

A member of the audience asked if they are looking at long-term cost with cumulative trauma disorders. Dr. Reville responded that he has not looked at these outcomes, but these are important observations for research.

Dr. Sacks commented that education should start with children. By the time people get to the workforce they have fixed habits and it won't make much difference. Dr. Reville replied that there are employer programs that require more exercise at work and they have shown to be effective in reducing employer costs and improving employee health.

In addition, Dr. Reville said that he needs to examine cost-effective examples.

Chairperson Tom Rankin suggested that RAND look at the smoking cessation programs in the State building trades.

**CHSWC Study of Medical Treatment Guidelines per Labor Code Section 77.5.**

Teryl Nuckols-Scott, M.D, M.S.H.S., RAND

Christine Baker introduced Dr. Nuckols-Scott and commented that the report on the medical treatment guidelines will be distributed to the public with recommendations and findings on November 15, 2004.

Dr. Nuckols-Scott made a presentation on the CHSWC study by RAND of the medical treatment guidelines. After presenting the background, purpose and approach of the study Dr. Nuckols-Scott summarized the findings, including the following points. Five guidelines met both the technical and clinical criteria (AAOS, ACOEM, IntraCorp, McKesson, and ODG). Although the eleven-member clinical panel found that all five guidelines need substantial improvement, the panelists preferred the specialty-society guidelines; the ACOEM guidelines were ranked #1 by the panelists with McKesson and ODG tying for second place; the ACOEM guidelines address three of the four surgical topics, but not lumbar fusion which is addressed by AAOS; in general, the panelists did not like the proprietary guidelines that limited clinical practice.

Dr. Lin asked why an acupuncturist was not included on the clinical panel and why acupuncture did not pass RAND's criteria. Dr. Nuckols-Scott responded that for this study, acupuncture was not considered as a priority area since it is not a cost driver. In addition, she added that the panel was limited in size to be effective. RAND's technical evaluation of the acupuncture guideline could be reported separately.

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Dr. Helm commented that the ACOEM guidelines address treatment on only the first 45 to 90 days. He asked how the CHSWC study by RAND study deals with pain management issues. Dr. Nuckols-Scott responded that the study did not address pain management.

Peter Diller commented that the quality and quantity of physical modalities are rarely addressed well in the ACOEM guidelines, although they are probably the single biggest cost driver. In addition, he asked if it would be better to delay promulgation rather than adopt incomplete guidelines. Dr. Nuckols-Scott noted that this was a good point.

Dr. Holmes stated that the legislation allows for submission of other guidelines aside from ACOEM, such as chiropractic guidelines; therefore, ACOEM guidelines can be used as a foundation and supplemented with other guidelines.

Tammy Richards, an occupational therapist, commented that the people who do peer review are not medical experts.

Dr. Roth, MD with McKesson commented that a narrative form of guidelines is subject to interpretation. He believes that the system needs consistency and validation. Dr. Roth commented that McKesson does not support treatment where there is no evidence that the treatment should be proscribed.

Lynn Hartzell commented that the people making utilization review decisions are not qualified. She asked if there will be continuing research studies before guidelines are adopted. Dr. Nuckols-Scott deferred this question to Ms. Baker.

Paul Gilpin with McKesson asked why a health care organization and utilization review nurse or medical director was not included on the clinical expert panel. Dr. Nuckols-Scott replied that the clinical expert panel was looking at clinical validity of the guidelines and thus did not want input from stakeholders at that juncture. A separate stakeholder meeting was held where those constituents could attend.

Dr. Kahn asked if there is a RAND study on how providers are going to get paid for the services. Chairperson Rankin responded that he understands that some insurance companies are instructing adjusters to use the ACOEM guidelines in the strictest and most restricted sense, but that is not the law.

Commissioner Davenport asked whether RAND would conduct the study any differently now and whether a different set of clinical panelists could produce a different result. Dr. Nuckols-Scott answered that there is no existing method of evaluating clinical validity of content. RAND/UCLA has done studies with separate panels evaluating same therapies and found moderate agreement. RAND/UCLA also looked at clinical validity judgments of expert panels compared to later high-quality studies and concluded that the panel usually is validated, so the panel method is very robust.

Commissioner Steinberg asked if RAND has a recommendation to start developing the guidelines from scratch. Dr. Nuckols-Scott responded that she prefers to answer this question at the next CHSWC meeting on November 15, 2004.

Steve Cattolica asked what the process would be after November 15, 2004. Ms. Baker responded that on November 15, 2004, the Commission may recommend submitting the CHSWC study by RAND to Andrea Hoch, the Division of Workers' Compensation Administrative Director (AD), for her consideration. Chairperson Rankin added that whether or

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not CHSWC makes a recommendation, the AD has to adopt treatment guidelines by December 1, 2004. She may or may not choose to adopt CHSWC's recommendations.

**Update on Electronic Payment Systems and Access to Funds Study**

D. Lachlan Taylor, CHSWC Staff Judge

Judge Taylor provided an update on the electronic payment systems study. He pointed out that there is a potential of about \$140 million savings annually in converting from paper checks to electronic payment. He commented that there are multiple questions to be resolved before the benefit payment systems can move entirely to electronic payment, including assuring that the infrastructure will be in place to handle all the payments.

Judge Taylor noted that the revised CHSWC recommendation is to authorize the AD of the Division of Workers' Compensation (DWC) to move toward implementing the electronic payment of workers' compensation benefits over time, beginning with direct deposit at the election of the payee.

CHSWC is obtaining further information on cost savings achieved by converting from paper checks to electronic payment.

Commissioner Davenport asked whether it is easier for government than for the private sector to implement an electronic deposit system. Judge Taylor responded that the problems of the government mandating a payment system for use by the private sector are different from the problems of the government adopting its own payment system.

Commissioner Wilson asked if the draft paper had been posted on the website. Ms. Baker replied that it would be posted after approval by the Commission.

*CHSWC Vote*

Commissioner Wilson moved to approve the draft report for distribution and review. Commissioners Thacker and Davenport seconded, and the motion passed unanimously.

**Update on the Division of Workers' Compensation**

Jacqueline Schauer, Manager of the DWC Legal Unit

Ms. Schauer commented that medical provider networks are one of the highest priorities, and that with the assistance of an advisory group, they were adopted on November 1, 2004. The Division is now accepting medical provider network applications.

Independent medical review regulations are in the process of being adopted. An advisory group met on October 20, 2004, and comments are being accepted on the web forum until November 5, 2004. The DWC will be submitting regulations for emergency adoption to the Office of Administrative Law by December 17, 2004, and they are expected to be adopted by January 1, 2005.

The medical treatment utilization schedule group is looking forward to CHSWC's recommendations on November 15, 2004. The challenge is to adopt a schedule by December 1, 2004, but to get public input before that date. The Division is trying to balance the deadline with the need for input and to realize that the ACOEM guidelines are in place as a safety net.

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Ms. Schauer reported that the Permanent Disability Schedule is due by January 1, 2005, and that the next Permanent Disability Advisory Group meeting will be on November 15, 2004.

A question was asked about how the public is informed of the web forum. Ms. Schauer responded that notices are posted on the website and emails are sent to those who have subscribed.

Another question was posed about the deadline and whether medical provider network applications are to be approved by January 1, 2005. Ms. Schauer replied that there is no deadline and no known processing time.

A final question was posed about the medical provider network application receipt and confirmation process. Ms. Schauer responded that the 60-day period starts from the date the application is received by the Division.

**Update on the Project to Evaluate Benefit Integration**

Frank Neuhauser, Project Director, UC DATA, UC Berkeley

Mr. Neuhauser first commented that of the hundreds of commissions he comes in contact with on the federal and state level, CHSWC has the most extensive input into the research community. He emphasized that CHSWC is an excellent forum both for the level of research presented and for the research generated by CHSWC.

Mr. Neuhauser continued to present CHSWC's study on benefit integration. The purpose of the study is to explore whether there is a more rational way to deliver occupational and non-occupational health benefits and disability benefits. The question is whether integration of these benefits would produce savings and whether savings could be applied to enlarge health coverage or reduce costs.

Mr. Neuhauser commented that California is one of five states that have a non-occupational disability insurance program; therefore, SDI data and California Workers' Compensation Institute data can be compared. SDI has 2.5 times as many claims as workers' compensation but has lower costs and claims are often short-term, such as pregnancy-related conditions. Workers' compensation, in contrast, is characterized by longer durations.

Mr. Neuhauser commented that workers' compensation was expected to have shorter duration because of intervention by employer/insurer to encourage early return to work. SDI is administered more passively. Disability durations, however, were found to be very similar for the same diagnosis in the two systems.

Some of the questions raised by the study include whether there is a tradeoff between occupational and non-occupational disability, and whether non-occupational factors produce a similar frequency in all occupations.

Mr. Neuhauser commented that he will have confidential access to detailed federal Medical Expenditure Panel Survey and state data and he hopes to provide additional information by February.

Peggy Sugarman asked if the study's finding of similar temporary disability and SDI durations is due to delay in accepting workers' compensation claims. Mr. Neuhauser responded that they

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have sorted out the disputed workers' compensation cases, but he will verify that disputed cases are sorted out.

Debbie Nosowsky commented that workers' compensation picks up the cost of underlying medical conditions when treating the occupational condition. Mr. Neuhauser responded that in those cases, we expect occupational medical costs to drive lower non-occupational costs, but we are finding the opposite.

A member of the public asked if the study would provide a long-range evaluation of cases. Mr. Neuhauser replied that SDI data runs from 1992 to 2003, but has medical data only for after 1997. SDI is typically limited to one year at most. The Medical Expenditure Panel Survey is a two-year snapshot with no information about prior or subsequent cases.

Public comments:

Dr. Ronald Lerch, President of Kona Bay Medical Management and chairman of the Coalition of Injured Workers, observed that the recent use of ACOEM guidelines leads to denial of necessary treatment. This delay increases cost to the system. The Coalition urges that patient care decisions remain in the hands of the primary provider without significant delay. Dr. Lerch also commented that utilization review decisions are not being made within the statutory time limit requirements. Currently, there are no penalties for exceeding the time limitations.

Dr. Standiford Helm, President of the California Society for Interventional Pain Management Physicians, commented that interventional pain management guidelines have been developed which draw on a larger body of literature than the ACOEM guidelines. He encouraged CHSWC to look at these guidelines as a supplement to the ACOEM guidelines, specifically for treatment of chronic pain.

CHSWC also received written comments and proposed guidelines from Chris Sharp on behalf of the California Biofeedback Society. A copy has been forwarded to the AD of the DWC and RAND.

**Adjournment**

The meeting was adjourned at 12:45 pm. The next CHSWC meeting will be November 15, 2004, in San Francisco.

Approved:

Respectfully submitted,

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Tom Rankin, Chair

Date

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Christine Baker, Executive Officer

Date